ESTTA Tracking number:

ESTTA194896 02/26/2008

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046965
Party	Plaintiff Gander Mountain Company
Correspondence Address	Paul Mussell Dorsey & Whitney LLP Suite 1500, 50 South Sixth Street Minneapolis, MN 55402-1498 UNITED STATES ueland.kevin@dorsey.com
Submission	Other Motions/Papers
Filer's Name	Kevin S. Ueland
Filer's e-mail	ueland.kevin@dorsey.com, bianchi-rossi.deanna@dorsey.com
Signature	/Kevin S. Ueland/
Date	02/26/2008
Attachments	Ueland Declaration.pdf (48 pages)(1191940 bytes)

Cancellation No.: 92046965

Atty. Ref. No.: 7495

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Gander Mountain Company

Petitioner,

٧.

ELM Development, LLC

Registrant.

Cancellation No.:

Reg. No.: 3,086,200

Mark: THE GANDERGUNMEN

Petitioner's File No.: 7495

UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board P.O. Box 1451 Alexandria, VA 22313-1451

DECLARATION OF KEVIN S. UELAND

I, KEVIN S. UELAND, declare and state as follows:

- I am an attorney licensed to practice in the State of Minnesota. I am an attorney 1. for Petitioner in this case. This Declaration is made in connection with the Reply Memorandum in Support of Petitioner's Motion to Amend.
- Attached hereto as Exhibit A are true and correct copies of excerpts from the Eric 2. Marhoun deposition transcript, pp. at 94-95 and 274-275.
- Attached hereto as Exhibit B is a true and correct copy of an excerpt from the 3. Eric Marhoun deposition transcript, pp. 24-25.
- Attached hereto as Exhibit C is a true and correct copy of an excerpt from the 4. Eric Marhoun deposition transcript, pp. 29-30.
- Attached hereto as Exhibit D is a true and correct copy of an excerpt from the 5. Eric Marhoun deposition transcript, p. 86.

Cancellation No.: 92046965

Atty. Ref. No.: 7495

6. Attached hereto as Exhibit E are true and correct copies of Registrant's

Statement of Use dated June 20, 2005 and Registrant's February 10, 2006, Response to Office

Action.

7. Attached hereto as Exhibit F is a true and correct copy of an excerpt from the

Eric Marhoun deposition transcript, pp. 28-29.

8. Attached hereto as Exhibit G is a true and correct copy of an excerpt from the

Eric Marhoun deposition transcript, p. 25.

9. Attached hereto as Exhibit H is a true and correct copy of an excerpt from the

Eric Marhoun deposition transcript, pp. 249-251.

10. Attached hereto as Exhibit I is a true and correct copy of an excerpt from the Eric

Marhoun deposition transcript, pp. 50-51.

11. Attached hereto as Exhibit J is a true and correct copy of an excerpt from the Eric

Marhoun deposition transcript, p. 16.

I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct.

Dated: February 26, 2008.

/Kevin S. Ueland/

Kevin S. Ueland

EXHIBIT A

1	Page 1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2	BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3	X
4	GANDER MOUNTAIN COMPANY :
5	Petitioner, : Reg. No.:
6	v. : 3,086,200
7	ELM DEVELOPMENT, LLC :
8	Registrant : Pages 1 - 389
9	COPY
10	
11	The deposition of ERIC L. MARHOUN, was
12	convened on Wednesday, December 12, 2007, at 8:24
13	a.m., at Funk & Bolton, 36 South Charles Street, 12th
14	Floor, Baltimore, Maryland, before Charlotte Burke,
15	Notary Public for the State of Maryland.
16	
17	Job No.: 668364
18	
19	
20	
21	

	Page 94
1	A Prelude to Hard Gravity DVD.
2	Q Are there others?
3	A There are no other goods.
4	Q Can you identify for me the services that
5	ELM Development Company LLC sells to consumers
6	directly under the GanderGunmen mark?
7	A Yes.
8	Q What are they?
9	A The only service sold relates to the
10	August 17th, 2002 transaction with Jeff Traxler.
11	Q And there has been no other services
12	rendered by ELM Development Company LLC in
13	connection with the GanderGunmen mark; is that true?
14	MS. KLIEBENSTEIN: Objection,
15	mischaracterizes his testimony.
16	A I'm not sure I understand what you mean by
17	services. Of course I developed the DVDs. There's
18	all sorts of services we do in order to distribute
19	it directly to people to produce it.
20	Q Those services go into actually producing
21	the goods that the consumer actually buys; is that
1	

	Page 95
1	correct?
2	A That is correct.
3	Q Does the customer actually buy services
4	from ELM Development Company LLC?
5	A Not other than previously identified.
6	Q Okay. And the next channel of trade that
7	you identified I believe was Internet or website
8	sales?
9	A Correct.
10	Q Does ELM Development has ELM
11	Development Company LLC sold product through the
12	website or through the Internet or websites?
13	A No, not to my knowledge.
14	Q Are there hang on, I just want to see
15	that question.
16	Are there plans for ELM Development
17	Company LLC to sell products through the Internet?
18	A Yes.
19	Q What products does ELM Development Company
20	LLC intend to sell through the Internet?
21	A Videos and DVDs of the Hard Gravity

	Page 274
1	A Yes.
2	Q And with that belief did you endeavor to
3	review this letter carefully?
4	A I can't I believe I did. I certainly,
5	you know, deferred to my attorneys to also review
6	their letters, but I think I looked at it. I
7	thought I looked at it carefully, I guess I didn't
8	catch that statement or typo.
9	Q Okay.
10	THE WITNESS: Could we take a quick break?
11	(Recess taken at 2:41 p.m.)
12	(Resumed at 2:49 p.m.)
13	BY MR. UELAND:
14	Q Leaving aside the interrogatory responses
15	and the letter for a second, I just want to ask, ELM
16	Development LLC in these responses, to the extent
17	that it talks about production and distribution is
18	talking about its own product, the Hard Gravity
19	product?
20	A Other than that one instance we've spent
21	so much time on today from August 2002, that is

Page 275 1 correct. ELM Development LLC is not producing or distributing a hunting show on behalf of or for 3 anybody else? 4 No. Α 5 Let's mark as Exhibit 15 GG000034. 6 copy of a trademark/service mark application for The 7 GanderGunmen. 8 (Deposition Exhibit Number 15 was marked for identification.) 10 As you're reviewing this document I'm 11 going to tell you my first question is going to be, 12 have you seen this document before? 13 I don't recall if I've seen it before. Α 14 Is this a document then that you reviewed 15 in preparing for this deposition? 16 I don't recall. I don't believe so. Α 17 You see that this is titled trademark/ 18 service mark application and there's a serial number 19 given, and then there is a filing date of 20 December 9th, 2003, do you see that? 21

EXHIBIT B

	Page 1
1	IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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3	X
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5	Petitioner, : Reg. No.:
6	v. : 3,086,200
7	ELM DEVELOPMENT, LLC :
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16	
17	Job No.: 668364
18	
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1	

1	Page 24 the record I may have the name of that LLC slightly
2	in error, I don't recall if it has company in its
3	name or not. But one of the additional services
4	that we have jointly provided is production of
5	waterfowl or outdoor videos on behalf of others,
6	namely, specifically produced one video for Jeff
7	Traxler, T-r-a-x-l-e-r, of Traxler Hunting Preserve,
8	relative to outdoor footage that Jeff Traxler had
9	and that Pierce Smith specifically edited into a
10	certain format for Jeff Traxler.
11	Q There's certainly a lot in that answer and
12	I want to go back to specific parts of it. You said
13	that ELM Development LLC in conjunction with another
14	LLC, The GanderGunmen Production Company, LLC?
15	A That's correct.
16	Q Has provided, and I don't want to
17	characterize, but what I took it as, production and
18	editing services for others, and the individual you
19	named was Jeff Traxler?
20	A That's correct.
21	Q I believe in your answers you said the

	Page 25
1	person who specifically provided the editing
2	services was Pierce Smith?
3	A That's correct.
4	Q And I think you testified earlier that
5	Pierce Smith has no role with ELM Development LLC?
6	A That's correct.
7	Q What was ELM Development LLC's specific
8	role with respect to the production of the Jeff
9	Traxler video?
10	A The introduction of Pierce Smith and ELM
11	Development to Jeff Traxler in the form of a viewing
12	that was provided in my predecessor capacity in
13	August of 2002 strike that. That would have
14	actually been just after forming the LLC. But
15	basically I introduced Jeff Traxler and Pierce Smith
16	at Traxler Hunting Preserve on August 17th, 2002,
17	when we were showing a video to patrons there of The
18	GanderGunmen's Hard Gravity.
19	And the specifics are that Jeff Traxler,
20	who was the proprietor, liked the product that we
21	were showing to his patrons and asked us,

EXHIBIT C

1	Page 1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2	BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3	X
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5	Petitioner, : Reg. No.:
6	v. : 3,086,200
7	ELM DEVELOPMENT, LLC :
8	Registrant : Pages 1 - 389
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16	
17	Job No.: 668364
18	
19	
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21	

	Page 29
1	to Pierce Smith to edit. Was that footage ever
2	edited into a product that was sold commercially?
3	A It was edited into a short product I
4	believe and understand that was provided to Jeff
5	Traxler in return for consideration that he provided
6	to Pierce and I.
7	Q Okay. Maybe I wasn't clear in my
8	question. But I guess my question is was the
9	footage that was given to Mr. Smith by Mr. Traxler
10	edited into a product that Mr. Traxler then
11	subsequently sold as a commercial product?
12	A Not that I'm aware of.
13	Q Okay. I understand from your answer that
14	in exchange for Mr. Smith's editing services certain
15	hunting services were given in exchange or bartered;
16	is that true?
17	A Yes. I think the most accurate term is
18	bartered, services from Jeff Traxler's hunting
19	preserve were provided to ELM Development and Pierce
20	Smith.

Q What sort of services were provided by

21

	Page 30
1	Mr. Traxler?
2	A Lunch and a hunt with a few birds at his
3	hunting preserve.
4	Q Was there any other services provided?
5	A No, not with respect to that transaction.
6	Q And was there any money exchanged as a
7	part of that transaction?
8	A No. No money was exchanged as a result of
9	that transaction.
10	Q Apart from providing these editing and
11	production services to Mr. Traxler, has ELM
12	Development LLC provided any other production or
13.	editing services to anybody else?
14	A Other than with respect to ELM Development
15	endeavors I'm not quite sure I understand others.
16	Q Let me clarify my question.
17	You had volunteered Mr. Traxler as
18	someone an other
19	A Yes.
20	Q who had been the recipient of video
21	editing and production services. And by other you

EXHIBIT D

1	
	Page 1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
:	BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
] :	3X
4	4 GANDER MOUNTAIN COMPANY :
	Petitioner, : Reg. No.:
	s v. : 3,086,200
,	7 ELM DEVELOPMENT, LLC :
	Registrant : Pages 1 - 389
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16	· · · · · · · · · · · · · · · · · · ·
17	7 Job No.: 668364
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19	
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		Page 86
1	A	Ducks Unlimited is a waterfowl
2	conservat	ion organization.
3	Q	Was the purpose of the trade show in
4	September	2002 to make contacts to sell DVDs?
5	А	Yes.
6	Q	So in September 2002 ELM Development
7	Company L	LC contemplated selling DVDs?
8	А	Yes.
9	Q	Similarly, the meeting in 2003, was that
10	also spon	sored by Ducks Unlimited?
11	А	Yes.
12	Q	Was it the same meeting, just the year
13	after?	
14	A	Basically, yes.
15	Q	Okay. And at that meeting did ELM
16	Developme	nt Company LLC go to that meeting with the
17	purpose o	f making contacts for the sale of waterfowl
18	DVDs?	
19	A	Yes.
20	Q	And were contacts made at these meetings?
21	А	Yes.

EXHIBIT E

Document Description: Statement of Use Mail / Create Date: 20-Jun-2005 Prievious Pane: Next Page You are currently on page 1 of 3 222XX PTO Form 1553 (Rev 9/2005) OMB No. 0651-0054 (Exp. 11/30/2008) Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d)) The table below presents the data as entered. Input Field Entered **SERIAL NUMBER** 78338333 LAW OFFICE ASSIGNED LAW OFFICE 111 YES NOTICE OF ALLOWANCE **EXTENSION OF USE** NO REQUEST TO DIVIDE NO MARK SECTION STANDARD CHARACTERS YES **USPTO-GENERATED IMAGE** YES LITERAL ELEMENT THE GANDERGUNMEN **OWNER SECTION (current)** NAME ELM Development, LLC STREET 1147 Bald Eagle Court **CITY** Eagan **STATE** Minnesota ZIP/POSTAL CODE 55123 COUNTRY **United States OWNER SECTION (proposed)** NAME ELM Development, LLC STREET 15660 Ramsey Blvd., N.W.

СІТУ	Ramsey
STATE	Minnesota
ZIP/POSTAL CODE	55303
COUNTRY	United States
ATTORNEY SECTION (curren	t)
NAME	Christopher Schulte
ATTORNEY SECTION (propos	sed)
NAME	Christopher J. Schulte
DOCKET NUMBER	15014.0002US01
GOODS AND/OR SERVICES S	ECTION
INTERNATIONAL CLASS	041
GOODS AND/OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	09/00/2002
FIRST USE IN COMMERCE DATE	09/00/2002
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT10\IMAGEOUT10\783\383 \\78338333\xml3\SOU0002.JPG
SPECIMEN DESCRIPTION	Scanned photograph of mark affixed to trailer
PAYMENT SECTION	
NUMBER OF CLASSES	1
SUBTOTAL AMOUNT	100
TOTAL AMOUNT	100
SIGNATURE SECTION	
SIGNATURE	/Eric Marhoun/
SIGNATORY NAME	Eric Marhoun
SIGNATORY DATE	06/20/2005
SIGNATORY POSITION	President
FILING INFORMATION	
SUBMIT DATE	Mon Jun 20 17:17:02 EDT 2005
TEAS STAMP	USPTO/SOU-64.247.209.187- 20050620171702016379-7833 8333-25074b8cf4f27a3a1542

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PTO Form 1553 (Rev 9/2005) OMB No. 0651-0054 (Exp. 11/30/2008)

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

To the Commissioner for Trademarks:

MARK: THE GANDERGUNMEN SERIAL NUMBER: 78338333

This Allegation of Use is being filed after a Notice of Allowance has issued.

The applicant, ELM Development, LLC, having an address of 15660 Ramsey Blvd., N.W., Ramsey, Minnesota United States 55303, is using or is using through a related company or licensee the mark in commerce on or in connection with the goods and/or services as follows:

For International Class: 041, the applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 09/00/2002, and first used in commerce at least as early as 09/00/2002, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Scanned photograph of mark affixed to trailer.

Specimen-1

The applicant hereby appoints Christopher J. Schulte to submit this Trademark/Service Mark Statement of Use on behalf of the applicant. The attorney docket/reference number is 15014.0002US01.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class.

Declaration

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Eric Marhoun/ Date Signed: 06/20/2005

Signatory's Name: Eric Marhoun Signatory's Position: President

RAM Sale Number: 551

RAM Accounting Date: 06/21/2005

Serial Number: 78338333

Internet Transmission Date: Mon Jun 20 17:17:02 EDT 2005 TEAS Stamp: USPTO/SOU-64.247.209.187-200506201717020

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Violus Rager	You are currently on page 1 of 2
orm 1957 (Rev 5/2006) o. 0651-0050 (Exp. 04/2009)	
	nse to Office Action
The table belo	w presents the data as entered.
Input Field	Entered
SERIAL NUMBER	78338333
LAW OFFICE ASSIGNED	LAW OFFICE 111
MARK SECTION (no change)	
GOODS AND/OR SERVICES S	ECTION (current)
INTERNATIONAL CLASS	041
DESCRIPTION	
Entertainment services, namely, pro	oduction and distribution of a hunting show
FIRST USE ANYWHERE DATE	At least as early as 09/00/2002
FIRST USE IN COMMERCE DATE	At least as early as 09/00/2002
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES S	ECTION (proposed)
INTERNATIONAL CLASS	041
DESCRIPTION	
Entertainment services, namely, pr	oduction and distribution of a hunting show
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/00/2002
FIRST USE IN COMMERCE DATE	At least as early as 09/00/2002
STATEMENT TYPE	"The substitute specimen(s) was in use in commerce prior to expiration of the filing deadline for filing a Statement of Use (SOU)."

GG 000010

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SPECIMEN FILE NAME(S)	\78338333\xml1\RO A0002.JPG
SPECIMEN DESCRIPTION	Screenshot from DVD
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
DECLARATION SIGNATURE	/s/ eric l marhoun
SIGNATORY NAME	Eric Marhoun
SIGNATORY POSITION	President
SIGNATURE DATE	02/10/2006
RESPONSE SIGNATURE	/Christopher J. Schulte/
SIGNATORY NAME	Christopher J. Schulte
SIGNATORY POSITION	Attorney for Applicant
SIGNATURE DATE	02/10/2006
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Feb 10 17:30:42 EST 2006
TEAS STAMP	USPTO/ROA-64.247.209.187- 20060210173042095687-7833 8333-320e3d3d97f3486caffb 02bc3ecb70665d-N/A-N/A-20 060210155253999999

PTO Form 1957 (Rev 5/2006) OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 78338333 has been amended as follows: Classification and Listing of Goods/Services

Applicant hereby amends the following class of goods/services in the application as follows: Current: Class 041 for Entertainment services, namely, production and distribution of a hunting show

Original Filing Basis: 1(b).

Proposed: Class 041 for Entertainment services, namely, production and distribution of a hunting show

New/Additional Basis:

Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 09/00/2002 and first used in commerce at least as early as 09/00/2002, and is now in use in such commerce.

Applicant hereby submits a specimen for Class 041.

The specimen(s) submitted consists of Screenshot from DVD.

For an application based on 1(b), Intent-to-Use, "The substitute specimen(s) was in use in commerce prior to expiration of the filing deadline for filing a Statement of Use (SOU)."

Specimen-1

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /s/ eric l marhoun Date: 02/10/2006

Signatory's Name: Eric Marhoun Signatory's Position: President

Response Signature

Signature: /Christopher J. Schulte/ Date: 02/10/2006

Signatory's Name: Christopher J. Schulte Signatory's Position: Attorney for Applicant

Serial Number: 78338333

Internet Transmission Date: Fri Feb 10 17:30:42 EST 2006 TEAS Stamp: USPTO/ROA-64.247.209.187-200602101730420

95687-78338333-320e3d3d97f3486caffb02bc3 ecb70665d-N/A-N/A-20060210155253999999

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EXHIBIT F

	Page 1
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15	Notary Public for the State of Maryland.
16	
17	Job No.: 668364
18	
19	
20	
21	

	Page 28
1	anything in the video that said this is an ELM
2	Development LLC production?
3	A Yes.
4	Q And when did it say that?
5	A At the beginning of the video it said ELM
6	Development, paren, Elmo, end paren, presents The
7	GanderGunmen, Hard Gravity. And then it had a lead-
8	in with background music as just about every
9	iteration of our videos from 2001 onward had, which
10	is a definition of gander with background music, the
11	definition of gunmen with background music, the
12	definition of hard, again, with background music, a
13	definition of gravity. And the ELMO, ELMO is just,
14	it's a DBA name for ELM Development LLC, that stands
15	for ELM outdoors.
16	Q Okay.
17	A So all of this lead-in was just, in many
18	respects, sort of standard and sort of the playing
19	on the definitions and words like ELM Outdoors
20	becomes Elmo.
21	Q Okay. The footage that Jeff Traxler gave

	Page 29
1	to Pierce Smith to edit. Was that footage ever
2	edited into a product that was sold commercially?
3	A It was edited into a short product I
4	believe and understand that was provided to Jeff
5	Traxler in return for consideration that he provided
6	to Pierce and I.
7	Q Okay. Maybe I wasn't clear in my
8	question. But I guess my question is was the
9	footage that was given to Mr. Smith by Mr. Traxler
10	edited into a product that Mr. Traxler then
11	subsequently sold as a commercial product?
12	A Not that I'm aware of.
13	Q Okay. I understand from your answer that
14	in exchange for Mr. Smith's editing services certain
15	hunting services were given in exchange or bartered;
16	is that true?
17	A Yes. I think the most accurate term is
18	bartered, services from Jeff Traxler's hunting
19	preserve were provided to ELM Development and Pierce
20	Smith.
21	Q What sort of services were provided by

EXHIBIT G

1	Page 1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2	BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3	X
4	GANDER MOUNTAIN COMPANY :
5	Petitioner, : Reg. No.:
6	v. : 3,086,200
7	ELM DEVELOPMENT, LLC :
8	Registrant : Pages 1 - 389
9	COPY
10	
11	The deposition of ERIC L. MARHOUN, was
12	convened on Wednesday, December 12, 2007, at 8:24
13	a.m., at Funk & Bolton, 36 South Charles Street, 12th
14	Floor, Baltimore, Maryland, before Charlotte Burke,
15	Notary Public for the State of Maryland.
16	
17	Job No.: 668364
18	
19	
20	
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	Page 25
1	person who specifically provided the editing
2	services was Pierce Smith?
3	A That's correct.
4	Q And I think you testified earlier that
5	Pierce Smith has no role with ELM Development LLC?
6	A That's correct.
7	Q What was ELM Development LLC's specific
8	role with respect to the production of the Jeff
9	Traxler video?
10	A The introduction of Pierce Smith and ELM
11	Development to Jeff Traxler in the form of a viewing
12	that was provided in my predecessor capacity in
13	August of 2002 strike that. That would have
14	actually been just after forming the LLC. But
15	basically I introduced Jeff Traxler and Pierce Smith
16	at Traxler Hunting Preserve on August 17th, 2002,
17	when we were showing a video to patrons there of The
18	GanderGunmen's Hard Gravity.
19	And the specifics are that Jeff Traxler,
20	who was the proprietor, liked the product that we
21	were showing to his patrons and asked us,

EXHIBIT H

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- 1 BY MR. UELAND:
- 2 Q I have this open to the entry for
- 3 8/17/2002. I'm going to hand you your entire
- 4 journal.
- 5 A Thank you.
- 6 MS. KLIEBENSTEIN: I have another copy if
- 7 you need another copy.
- 8 Q I want you to read the entry for
- 9 8/17/2002.
- 10 A Eric --
- 11 Q I'm sorry, you don't have to read it out
- 12 loud, you can just familiarize yourself with it and
- 13 then I want you to find for me and read aloud the
- 14 portion that you think corroborates your belief that
- 15 ELM Development LLC provided editing services to
- 16 Jeff Traxler on August 17th, 2002.
- 17 A On the second page of the entry, about
- 18 halfway down there is an entry that says we watched
- 19 Hard Gravity, our best hits reel, in lodge while we
- 20 ate cheeseburgers and drank beer. All the patrons
- 21 loved it. Jeff Traxler, owner, was so impressed he

	Page 250
1	gave Moneyshot ten videos to mix slash
2	Q Let me interrupt you for a second. Who is
3	Moneyshot?
4	A That I believe is a reference Pierce is
5	making to himself, this is his entry.
6	Q Okay. This is Pierce's entry here and do
7	you feel comfortable that you understand what Pierce
8	Smith's intending when he writes in your journal?
9	A I was there when he wrote it and I was
10	there when he spoke with Jeff Traxler.
11	Q That's fine. Your counsel's objected
12	previously when I put Pierce Smith's words in front
13	of you, but I want to make sure you feel comfortable
14	interpreting his words now.
15	A Yes, because, again, I was there when he
16	wrote it.
17	Q Fine.
18	A And I was there when he spoke to Jeff
19	Traxler.
20	Q Fine. I'm sorry, I interrupted because I

21 wanted to know who Moneyshot was. Please continue.

	Page 251
1	A Jeff Traxler, owner, was so impressed he
2	gave Moneyshot ten videos to mix/edit and will
3	barter for future hunts.
4	That language reminds me very vividly of
5	this incident and the following editing work that
6	Pierce and I did.
7	Q But the reference is he gave the videos to
8	Moneyshot, who you've identified as Pierce Smith.
9	You're not identified as someone who provides
10	editing services in that journal, are you?
11	A Correct.
12	Q Okay. By the way, there's a reference in
13	the journal to a drake slayer, who is that?
14	A That is Pierce's reference to Eric
15	Marhoun.
16	Q A drake is a male duck; is that right?
17	A That is correct.
18	Q So you're that reference to you as
19	drake slayer is meant to imply one who kills male
20	ducks?
21	A Correct.

EXHIBIT I

İ	Page 1
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	Page 50
1	not.
2	Q Well, let me ask you, the Hard Gravity,
3	the footage on these Hard Gravity DVDs, who owns
4	that footage?
5	A I and Pierce Smith own that footage and
6	whoever I believe, but I don't know this might
7	be his designee.
8	Q Do you consider ELM Development Company
9	LLC as an owner of that footage?
10	A No.
11	Q Underneath that sentence there is another
12	sentence that says: In addition our firm offers to
13	qualified clients contracted pre and post
14	production, video consulting and editing services,
15	do you see that?
16	A Yes, I do.
17	Q What firm is being referred to in that
18	statement?
19	A I don't know.
20	Q Do you know whether it's referring to ELM
21	Development Company LLC?

	Page 51
1	MS. KLIEBENSTEIN: Objection, asked and
2	answered.
3	A I don't know.
4	Q Would it be a true statement if it was
5	referring to ELM Development Company LLC?
6	MS. KLIEBENSTEIN: Objection, asked and
7	answered.
8	A No.
9	Q Because ELM Development Company LLC does
10	not provide those services?
11	A Not currently.
12	Q Have they ever provided those services?
13	A I believe the services I described that
14	were being offered to Jeff Traxler fall within this
15	category.
16	Q You believe that introducing Mr. Traxler
17	to Mr. Smith falls within that category?
18	A That's correct.
19	Q Okay. That's fair. Let's turn to the
20	next page. And I apologize the way this printed out
21	but I have no control over that, my technical

EXHIBIT J

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	Page 16
1	Eric Marhoun, and Teri, when she signed this
2	document.
3	Q So does the ELM Development LLC have any
4	employees?
5	A No.
6	Q What is the fiscal year for ELM
7	Development LLC?
8	A The calender year.
9	Q Does Pierce Smith have any role with ELM
10	Development LLC?
11	A No.
12	Q Quinn Merritt, does he have any role with
13	the LLC?
14	A No.
15	Q Is it fair to say that ELM Development LLC
16	is your alter ego?
17	A I think so.
18	Q Okay. And by the way
19	A I'm not sure precisely what that means in
20	the context of an LLC, but certainly I'm the person
21	who acts on behalf of ELM Development LLC.